

Message Text

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C O N F I D E N T I A L ROME 4015

E.O. 11652: GDS

TAGS: CPRS, PFOR, SNAR, IT

SUBJECT: EXTRADITION - CARLO ZIPPO

REF: A. STATE 53981; B. ROME 9893

SUMMARY: GOI HAS DECLINED TO EXTRADITE ZIPPO TO US BECAUSE IT WANTS TO TRY HIM FOR THE SAME OFFENSES AS CHARGED BY THE USG. EMBASSY RECOMMENDS USG FACILITATE ITALIAN MAGISTRATE'S REQUEST TO TAKE DEPOSITIONS FROM COOPERATIVE WITNESSES IN US. END SUMMARY.

1. FOLLOWING PARAGRAPH REVIEWS STATUS OF ZIPPO CASE, IN LIGHT OF ALL INFORMATION AVAILABLE TO MISSION, INCLUDING OUR READING OF CASSATION COURT JUSGEMENT.

2. ZIPPO AND HIS ATTORNEYS SOUGHT IN CASSATION TO OVERTURN EARLIER SALERNO APPEALS COURT APPROVAL OF ZIPPO'S EXTRADITION. ARGUMENTS FOR OVERTURN, HIGHLY SUMMARIZED, WERE A) THAT ITALIAN CONSTITUTION PROHIBITS EXTRADITION OF ITALIAN CITIZENS FOR OFFENSES NOT INCLUDED IN (AMENDED) 1869 EXTRADITION CONVENTION, B) THAT THE EVIDENCE PRESENTED HAD BEEN INADMISSABLE AND/OR INADEQUATE TO ESTABLISH THAT A CRIME HAD BEEN COMMITTED, AND C) THAT DOUBLE JEOPARDY WAS ENTAILED. THE CASSATION COURT REJECTED ARGUMENTS A) AND B) ON THE GROUNDS THAT A) THE ITALIAN CONSTITUTION AND PENAL CODE DO NOT PERMIT EXTRADITION OF ITALIAN CITIZENS FOR OFFENSES NOT CONTEMPLATED BY EXISTING "CONVENTIONS" AND B) THAT IT AGREED WITH THE APPEALS COURT FINDING ON (ACCEPTABILITY OF) THE EVIDENCE. HOWEVER, THE CASSATION COURT UPHELD THE THIRD

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ARGUMENT ON GROUNDS, AGAIN HERE HIGHLY SUMMARIZED, THAT THE

OFFENSES FOR WHICH ZIPPO IS WANTED FOR TRIAL IN THE UNITED STATES ARE IDENTICAL WITH THOSE FOR WHICH HE HAS BEEN ARRESTED, AND FOR WHICH HE MUST UNDER ITALIAN LAW BE TRIED IN ITALY. THE COURT HELD THAT SINCE THE OFFENSES CHARGED BY THE UNITED STATES WERE NOT INCLUDED IN THE 1869 LIST OF EXTRADITABLE OFFENSES, EXTRADITION BECAME "FACULTATIVE" RATHER THAN OBLIGATORY. EXERCISING THIS OPTION, THE COURT DENIED EXTRADITION IN THE CIRCUMSTANCES AS BEING IN CONTRAST WITH ITALY'S SYSTEM OF LAW.

3. ZIPPO IS NOW IN GOI CUSTODY ON THE BASIS OF ADMISSIONS APPARENTLY MADE TO ITALIAN JUDICIAL AUTHORITIES DURING EXTRADITION HEARINGS. IT IS UNDERSTOOD, HOWEVER, THAT BEYOND THOSE ADMISSIONS, THE GOI HAS LITTLE HARD EVIDENCE AGAINST ZIPPO. THE INVESTIGATING MAGISTRATES HAVE REQUESTED (REF. B) USG CONCURRENCE AND COOPERATION IN THEIR TRAVEL TO THE UNITED STATES TO TAKE DEPOSITIONS FROM PERSONS FAMILIAR WITH ZIPPO'S TRAFFICKING ACTIVITIES WHO ARE NOW AWAITING TRIAL AND/OR SENTENCING IN NEW YORK FOR THE SAME CRIMINAL CONSPIRACY ZIPPO IS CHARGED WITH. SUCH DEPOSITIONS WOULD BE FULLY ADMISSABLE IN ITALIAN COURTS WHEN ZIPPO IS BROUGHT TO TRIAL, AND THERE APPEAR TO BE VALID REASONS TO ASSUME THOSE DEFENDENTS MAY WISH TO COOPERATE.

4. DEA HEADQUARTERS REPLY OF FEBRUARY 28, 1975 NOTED THAT THE RELEVANT US ATTORNEY HAD AGREED TO DISCUSS "MATTERS OF MUTUAL INTEREST" WITH THE ITALIAN MAGISTRATES ON THEIR ARRIVAL IN THE UNITED STATES, BUT COULD NOT ASSURE AVAILABILITY OF THE DESIRED WITNESSES, DUE APPARENTLY TO CERTAIN QUESTIONS OF RIGHTS. NEVERTHELESS, THE MAGISTRATES HAVE INFORMED US THAT THEY INTEND TO PROCEED TO NEW YORK AFTER MARCH 30.

5. THE EMBASSY IS NOT INFORMED ON THE RIGHTS ISSUES INVOLVED. HOWEVER, IT DOES WISH TO DRAW DEPARTMENT'S ATTENTION TO TWO OTHER IMPORTANT ASPECTS OF THE ZIPPO CASE.

6. IF MAGISTRATES ARE UNABLE TO ADDUCE MORE EVIDENCE AGAINST ZIPPO THAN THEY NOW HAVE, AND SHOULD THEY PROCEED TO TRY ZIPPO ON THE CURRENT CONSPIRACY CHARGES, ZIPPO MAY WELL GET CONFIDENTIAL

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OFF SCOT FREE, NULLIFYING ON DOUBLE JEOPARDY GROUNDS ANY FURTHER QUESTION OF EXTRADITION.

7. THE SUCCESS OF THE EMBASSY IN FUTURE EXTRADITION CASES WILL DEPEND TO AN IMPORTANT BUT INDETERMINATE DEGREE ON THE GOODWILL AND COOPERATIVE SPIRIT OF THE ITALIAN MINISTRY OF JUSTICE AND THE HIGHLY INDEPENDENT MAGISTRACY. ALTHOUGH ZIPPO'S EXTRADITION HAS BEEN DENIED, ITALIAN DESIRE TO TRY

HIM THEMSELVES FOR THESE OFFENSES COMMITTED PARTIALLY IN
ITALY SEEMS TO US A GOOD SECOND BEST. SINCE THEY SEEM
DETERMINED TO PROSECUTE, OUR MAXIMUM COOPERATION WITH THE
MAGISTRY WOULD NOT ONLY HELP ASSURE ZIPPO'S CONVICTION
BUT WOULD ALSO HELP PERSUDE MAGISTRACY THAT USG VIEWS
COLLABORATION ON EXTRADITION MATTERS AS A TWO-WAY STREET.
SUCH ACTION WOULD TAKE ON SPECIAL SIGNIFICANCE NEW THAT WE
ARE ENTERING INTO AN UPDATED RELATIONSHIP UNDER THE NEW
TREATY ON EXTRADITION.VOLPE

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